

Appl. No. 10/759,782
Amdt. dated _____
Reply to Office action of September 22, 2008

PATENT**REMARKS - DRAFT ONLY**

This paper is in response to the Office Action of Sept. 22, 2008.. The due date for response extends to Dec. 22, 2008. Reconsideration in view of this amendment is respectfully requested. The Examiner is thanked for reconsidering the prior art and for the telephone interview of November 26, 2008.

The Office action cited matter that might raise new matter issues. The Examiner is kindly referred to Pages 15 and 16, as well as figures 2, 3 and 4 of the as-filed application. The Applicants submit that disclosure was present for the identification being done from a defocused image produced by the defocused image captured device. Examples of ways to defocus the image capture device were also provided in paragraph [0038]. The Examiner is respectfully requested to kindly withdraw this rejection. The rejection under 35 USC Section 112, first paragraph, is also traversed for the same reasons.

Claims 1-5 and 34 were rejected under 35 USC § 103(a), as being unpatentable over Girod (US 6,677,987), in view of Levine et al. (6,709,108).. This rejection is respectfully traversed.

Girod is concerned with a system that allows interaction with between a user's light source and a camera. The teachings define a system that relies on the comparison of modulation of light, as detected between frames. Pixel luminance is key to Girod, as its algorithm requires specific focus on pixels detected between frames, before a threshold is reached. See step 618. If the threshold is not reached, the process continues analysis of the pixels in later frames, as shown in Figure 6. Additionally, based on the accurate detection of pixel luminance, relative to other pixels in a given area, decisions are made regarding confidences/likelihood of pixel changes. Consequently, the *clarity and brightness* of each pixel is important to Girod. To emphasize the importance, Girod, at Col. 3, line 58- Col. 4, line 4.

In the last office action, the Examiner indicated that the Applicant's traversal of Girod was persuasive, thus issuing a new rejection, when combined with Levine et al.

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